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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,388	11/12/2003	Jeffrey A. Swaim	CFS.004CP1	9608
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KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
			EXAMINER LUONG, SHIAN TINH NHAN	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/712,388	Applicant(s) SWAIM	
	Examiner Shian T. Luong	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/12/03, 12/8/03</u> | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election without traverse of species II in the reply filed on 10/17/05 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal

disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 13,14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22-23 of U.S. Patent No. 6,685,016. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite similar limitation with the exception of a bracket. The material recited in the pending application is obvious over the limitation covered by the patent claim.

Claim Rejections - 35 USC § 112

4. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 and 7, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). In claim 8, the term "upper apex" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-9,11,12 are rejected under 35 U.S.C. 102(b) as being anticipated by Trummer (US 6,354,477). Trummer discloses an apparatus comprising a platform having a generally triangular cross section as shown in Figures 10-14. The apparatus has a front portion 512 and a rear portion 712 meeting at an upper apex. A panel 1410 connects the the front portion to the rear portion opposite the upper apex. The front and rear portion configured to form a container in a closed configuration and is sized to transport devices. Straps 510 secure the electronic device to the front portion. At least two other straps 202,310,304,3061902,1904 are formed on the apparatus and allow a user to secure the apparatus to a person or a vehicle portion.

6. Claims 13,16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kelly et al. (Des. 380,612). Kelly et al discloses a case comprising a first panel (the flap portion), a second panel connected to the first panel at a flexible connection. A third panel is connected to the second panel at a second flexible connection where the two panels are hinged to one another. A zipper with two sets of engaging teeth, one set at the second panel and the other set on the third panel. A first strap is the interior foam divider and cushioning piece as shown in Figure 7. The second strap is the strap on an exterior portion of the case.

The first panel is also connected to the second panel with connectors. This is the corresponding connector on the first panel and the second panel where the first panel (the flap) is releasably attached to the second panel. In the event the case is not attached by hook and loop material, it would have been obvious to so as notoriously known in the art to secure one element to another.

In addition, in the event that the connections are not flexible, it is well known in the art to make the connection flexible to allow the case to rotate to a desired angle for retrieval of the article.

Claim Rejections - 35 USC § 103

7. Claims 4,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trummer in view of Hillsberg et al. (US 5,996,749). Trummer does not show a bump covered by a rubber material as recited in claims 4 and 10. However, Hillsberg et al. teaches a container for electronic equipment such as a computer with bumps 18,20 on the interior surface of the third panel. The bumps are covered by rubber material 24 to secure hold and protect the computer. The rubber material can also be considered a bump itself. It would have been obvious in view of Hillsberg to provide cushioning structure with a rubber material cover to securely hold the computer device of Trummer.

8. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. in view of Hillsberg et al. (US 5,996,749). Kelly et al. does not show a bump covered by a rubber material as recited in claim 14. However, Hillsberg et al. teaches a container for electronic equipment such as a computer with bumps 18,20 on the interior surface of the third panel. The bumps are covered by rubber material 24 to secure hold and protect the computer. The rubber material can also be considered a bump itself. It would have been obvious in view of Hillsberg to provide cushioning structure with a rubber material cover to securely hold the computer device of Kelly et al.

9. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. in view of Shyr (US 5,967,270). Although it appears Kelly et al. teaches the hooks and loops connection for the first and second panels, Shyr is cited to show an example of the Velcro connection 42.

Conclusion

10. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

11. If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official fax number is 7571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PT: deposit account. please identify Examiner Luong of Art Unit 3728 at the top of the cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Examiner Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

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Primary Examiner


Shihai Luong

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November 22, 2005